Paper No. 12
HRW

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 9/13/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Ralston Purina Company

v.

Robert Lelle

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Opposition No. 108,129
to application Serial No. 75/207,920
filed on December 4, 1996

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Alpheus E. Forsman for Ralston Purina Company.

Robert Lelle, pro se.

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Before Seeherman, Quinn and Wendel, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Robert Lelle filed an application to register the mark GRRRRIBS in the stylized format shown below for "edible dog treats."[1]

Ralston Purina Company filed an opposition to registration of the mark on the ground of likelihood of confusion under Section 2(d) of the Trademark Act. Opposer alleges use since long prior to December 4, 1996 of the mark GRRRAVY for dog food; ownership of a registration for this mark;[2] and the likelihood of confusion if applicant were to use his mark for his identified goods.

Applicant, in his answer, denied the salient allegations in the notice of opposition. Applicant has taken no action in the case since the filing of this answer.[3]

The record consists of the file of the involved application and the certified copies of opposer's pleaded registration which were made of record by means of opposer's notice of reliance. Opposer filed a brief, but an oral hearing was not requested.

Priority is not an issue here, in view of the certified status and title copy of its pleaded registration which opposer has made of record. King Candy Co., Inc. v. Eunice

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[1] Serial No. 75/207,920, filed December 4, 1996, based on an assertion of a bona fide intention to use the mark in commerce.
[2] Reg. No. 1,486,380, issued April 26, 1988 for the mark GRRRAVY for dog food. Combined Section 8 & 15 affidavit filed and accepted.

[3] Applicant filed, as part of his answer, a "response" which might be construed as applicant's brief on the case. As such, the paper was not filed within the time set for filing a brief, and, accordingly, it has been given no consideration. See Trademark Rule 2.128(a)(1). Even if considered, however, it is not persuasive of a different result on the merits of this case.

King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Thus, we turn to the issue of likelihood of confusion and to those of the du Pont factors which are relevant under the present circumstances.[4]

Insofar as the goods of the parties are concerned, we find little, if any, difference between opposer's dog food and applicant's edible dog treats. Both are eaten by dogs, whether as a basic food or a treat. Moreover, the word "food" obviously includes "treats," making the goods virtually identical for purposes of our determination of likelihood of confusion.

As such, the goods would travel in the same channels of trade and be marketed to the same purchasers in the same retail outlets. The issue narrows down to whether the marks are of such a degree of similarity that confusion as to source is likely on the part of these purchasers when they encounter GRRRAVY dog food and GRRRRIBS(stylized) dog treats. It is well recognized that in general the greater the similarity of the goods, the lesser the degree of similarity of the marks necessary to conclude that there will be a likelihood of confusion. Century 21 Real Estate

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[4] In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Looking at the marks, we note that both marks start with GRRR or GRRRR, the difference of one "R" being virtually meaningless, similar to the growling sound of a dog. The remainder of the marks GRRRAVY and GRRRRIBS both suggest a type of food, GRRRAVY a dog food having a gravy component and GRRRRIBS a dog treat which is flavored like or would be chewed like a "rib." The use of the same basic format in each mark (GRRR plus type of food) results in a very similar overall commercial impression, such that we find it likely that purchasers would mistakenly assume that GRRRAVY dog food and GRRRRIBS dog treats are two products originating from the same source. If these purchasers were already familiar with GRRRAVY dog food, they might well assume that the GRRRRIBS dog treat was a new product from the same source. See NutraSweet Co. v. K & S Foods, Inc., 4 USPQ2d 1964 (TTAB 1987).

Accordingly, we find the likelihood of confusion as to the source of the respective dog food products, particularly in view of the virtual identity of the goods and the similar commercial impressions projected by the marks GRRRAVY and GRRRRIBS.

Decision: The opposition is sustained.

E. J. Seeherman

T. J. Quinn

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board